

Date of Decision: 7th July 1995

SPECIAL CIVIL APPLICATION NO. 5924 of 1987

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

-----  
Smt. K.A. Mehta, Advocate, for the Petitioner

Shri V.B. Gerania, Asst. Government Pleader, for the Respondents  
-----

CORAM: A.N. DIVECHA, J.  
(7th July 1995)

ORAL JUDGMENT

The order passed by and on behalf of the State Government (Respondent No.1 herein) on 26th June 1984 is under challenge in this petition under Art. 227 of the Constitution of India. By its impugned order, Respondent No.1 set aside the order passed by the Town Development

Officer (Respondent No.2 herein) on 5th March 1983 granting permission for non-agricultural use of one parcel of land admeasuring 2420 square yards from survey No. 225 in all admeasuring 2 acres 4 gunthas situated at Barvala taluka Dhandhuka ('the disputed land' for convenience).

2. It is not necessary to set out in detail the facts giving rise to this petition. It may be sufficient to note that the disputed land was used for agricultural purposes. The petitioner applied for a permission to use it for non-agricultural purposes for raising a hotel therein. Such permission, on certain terms and conditions, was granted by respondent No.2 by his order passed on 5th March 1983. Its copy is at Annexure A to this petition. The petitioner thereafter made construction in accordance with the plans and obtained a licence to run hotel from the Sub-Divisional Magistrate at Dholka. Its copy is at Annexure B to this petition. It appears that the order at Annexure A to this petition came to the notice of the concerned officer of respondent No.1. He appears to have found it not according to law. Its suo motu revision under sec. 211 of the Bombay Land Revenue Code, 1879 ('the Code' for brief) was contemplated. A show-cause notice thereupon came to be issued on 28th May 1984 calling upon the petitioner to show cause why the order at Annexure A to this petition should not be revised. After hearing the petitioner, by the order passed by and on behalf of respondent No. 1 on 26th June 1984, the order at Annexure A to this petition came to be set aside. A copy of the aforesaid order passed on 26th June 1984 is at Annexure E to this petition. The aggrieved petitioner has thereupon approached this court by means of this petition under Art. 227 of the Constitution of India for questioning its correctness.

3. As rightly submitted by Smt. Mehta for the petitioner, relying on the Division Bench ruling of this court in the case of Bhagwanji Bawanji Patel v. State of Gujarat and Anr. reported in (1971) 12 G.L.R. 156, the powers under sec. 211 of the Code cannot be exercised after expiry of a period of one year from the date of the order sought to be revised. In the instant case the order at Annexure A to this petition was passed on 5th March 1983. The show-cause notice for its revision under sec. 211 was issued on 28th May 1984, that is, nearly 15 months after the date of the order at Annexure A to this petition. That was certainly beyond the period of 12 months prescribed by the aforesaid ruling of this court. In that view of the matter, respondent No.1 had no power or authority to upset the order at Annexure A to this petition in view of the aforesaid binding Division Bench ruling of this court. On this short ground this petition deserves to

be accepted and the impugned order at Annexure E to this petition deserves to be quashed and set aside.

4. In view of my aforesaid conclusion, I have not thought it fit to deal with the other submissions urged before me by Smt. Mehta for the petitioner pertaining to the merits of the order.

5. In the result, this petition is accepted. The order passed by and on behalf of the State of Gujarat on 26th June 1984 at Annexure E to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.